S.B.CIVIL WRIT PETITION No.9259/2002
JATAN KUMAR SETHI & Anr. V/s JAIPUR MUNICIPAL CORPORATION & Ors.

7.2.2007

HON'BLE MR. JUSTICE MOHAMMAD RAFIQ

Shri R.S. Mehta for the petitioner.
Shri Shyam Arya)
Shri A.Bhandari), for the respondents.

Grievance raised by the petitioners in this writ petition is that the measurements given by the respondents in their notice Annex.7, dated 30.9.2000 are not factually correct. This issue was agitated by them not only before the Divisional Commissioner but also in the Civil Court which is said to be pending as on date.

The petitioners had earlier also approached this court against the order passed by the Divisional Commissioner on 26.8.97 who while remanding the matter to the Municipal Corporation, Jaipur directed it to re-examine the sanction granted to the petitioners on 16.4.94 and 21.11.94. Such action was initiated against the petitioner at the instance of respondent No.2, Kapoor Chand Jain whose house is situated adjacent to that of the petitioner who was claiming easementry right. When he apprehend that his building would be damaged if

the petitioners were allowed to raise further constructions on their old house, located at House No.1946 situated in Johari Bazar. This court on consideration of the arguments of the learned counsel for the parties, who are again parties in the present petition, vide its judgment dated 25.4.1998 observed as under :

> "From the facts stated hereinbefore, it is quite apparent that the Divisional Commissioner has thoughtfully and carefully passed the order wherein it has categorically directed that only the portion which fall in the realm of unauthorised construction would be demolished. It is, therefore, further obvious that the permission granted by the Municipal Corporation on 16.4.94 and 21.11.94 will have to be treated as cancelled after enquiry in regard to only those portions of the building for which permission was wrongly granted in view of the fact that it infringed with the right of the respondent No.2 to use the portion which is in his occupation. It is also relevant to take into account the relevant fact that the petitioners themselves have given an undertaking before the A.D.J. No.4, Jaipur City, Jaipur that they will not raise any construction on the disputed portion of the building.
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> I,thus, find no infirmity in the order of the Divisional Commissioner, which is under challenge before this Court, as the Divisional Commissioner has in sound use of his discretion, passed a perfectly just order, which

> has taken into consideration the interest of both the parties – petitioners and respondent No.4.
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> The writ petitions, therefore, do not deserve any consideration and are therefore, dismissed at the admission stage itself. It is however, reiterated in the interest of justice, although, it already finds mention in the order of the Divisional Commissioner that only those portions will be required to be demolished which are found to be unauthorised after the enquiry is completed by the Municipal Corporation and, therefore, even if the petitioners may be found to have indulged in unauthorised construction, the entire sanctioned plan as per orders dated 16.4.94 and 21.11.94 will not be cancelled."

Consequent upon the aforesaid decision, notice Annex.7 dated 30.9.99 was issued to the petitioners. The petitioners submitted reply to the said notice and also filed a civil suit before the court of Additional Civil Judge (Jr. Div.) No.4, Jaipur City, Jaipur. The civil court initially on 4.10.2000 directed the parties to maintain status quo. Subsequently, however, the order was modified to say that the respondent Municipal Corporation would be at liberty to take steps and proceed for demolition of the such part of the building which are found to be unauthorised

in terms of the judgment passed by this court on 25.4.98. The respondent No.2 thereupon again approached the Divisional Commissioner who again passed a detailed order on 2.12.2002 with the direction to the Chief Executive Officer, Nagar Nigam, Jaipur and Commissioner Hawa Mahal, Zone East, Nagar Nigam, Jaipur to make compliance of his earlier order dated 26.8.97 in the light of the directions contained in the judgment of this court passed on 25.4.98 and proceed to demolish the unauthorised constructions.

Shri R.S. Mehta, learned counsel for the petitioners argued that the show cause notice Annexure 7, was not based on any factual survey conducted by the respondents, there was basis on which the respondents come to the conclusion about the unauthorised construction. He argued that only such part of the construction can be treated as unauthosirsed which is found in excess of the plans originally sanctioned by the Municipal Corporation on 16.4.94 and 21.4.94. He submitted that this court in earlier part of the judgment had upheld the order passed by the Divisional

Commissioner on 26.7.97 but while concluding it made clear that “only those portions will be required to be demolished which are found to be unauthorised after the enquiry is completed by the Municipal Corporation and, therefore, even if the petitioners may be found to have indulged in unauthorised construction, the entire sanctioned plan as per orders dated 16.4.94 and 21.11.94 will be cancelled.” In substance, he argued that even though the writ petition was dismissed yet the plans originally sanctioned on 16.4.94 and 21.11.94 were kept intact and to that extent the order of the Divisional Commissioner stood reversed. He further argued that the respondent No.2 had even filed review petition on the ground that there was inconsistently in that part of the judgment but the review petition was dismissed in so far as this aspect of the matter is concerned, and thereafter no further remedy has been available by either the respondent No.2 and or the Nagar Nigam thus, the judgment attained finality.

On the other hand, Shri Shyam Arya & Shri A.

Bhandari, the learned counsel for the respondents argued that on inspection of the building, the petitioners were found to have raised lot of such constructions which were in excess of the approved plans. The show cause notice given to the petitioners was based on the actual inspection vis-a-vis sanctioned plan. But the petitioners have tried to overreach the judgment passed by this court by approaching the civil court. It was because of the interim injunction order passed therein that the compliance of the judgment of this court could not be made. Subsequently when the respondent No.2 again approached the Divisional Commissioner and the impugned order was passed. The said construction still remain continue to incomplete because of the status quo order passed in the present writ petition on 12.2.02. In the result, this court specifically directed demolition of the unauthorised constructions which are found in excess of the plans sanctioned vide order4 dated 16.4.94 and 21.11.94. It is argued that the notice was issued to the petitioners by the respondent Municipal

Corporation and the provision of section 170 of the Rajasthan Municipality Act whereby only such part of the constructions were intended which are found unauthorised. The learned counsel, therefore, prayed that the writ petition be dismissed.

Having heard the learned counsel for the parties and perused the material on record, I find that notwithstanding dismissal of the earlier writ petition the plan sanctioned by the Municipal Corporation on 16.4.94 and 21.11.94 were retained as valid and the respondents were directed to demolish only such constructions which are found unauthorised after the enquiry being in excess of the sanctioned plan. It was directed that even if the petitioner has indulged in unauthorised constructions, the entire plan as per the orders dated 14.4.94 and 21.11.94 should not be treated as cancelled for that reason. I, therefore, reiterate the same direction earlier given by this court and direct the Chief Executive Officer and the concerned Zonal Commissioner, Hawa Mahal, East of the Jaipur,

Nagar Nigam to arrive the satisfaction as to the unauthorised construction made by the petitioners after taking into consideration the reply submitted by them and making such enquiry as may be deem appropriate by them and then proceed to demolish such unauthorised construction.

At this stage, a request was made by the learned counsel for the petitioners have the right to apply for compounding of the unauthorised construction and therefore they should be given liberty, if eventual certain parts of the constructions raised by the petitioners are found to be unauthorised to apply for compounding of such construction which may be considered by the respondents in accordance with the rules. I am afraid, this issue is not only premature because no such application has been made by the petitioners to the respondents seeking compounding but also goes contrary to the direction earlier given by this court in their writ petition.

With these directions, the writ petition is disposed of though with no order as to costs.

(Mohammad Rafiq),J.

Chauhan/